

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BELLSOUTH)	
TELECOMMUNICATIONS, INC. D/B/A)	
SOUTH CENTRAL BELL TELEPHONE COMPANY)	CASE NO. 94-121
TO MODIFY ITS METHOD OF REGULATION)	

O R D E R

This matter arising upon petition of BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company ("South Central Bell"), filed February 1, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of certain responses to the Attorney General's Data Request of July 5, 1994, on the grounds that the information is exempt from public disclosure by KRS 61.878(1), and it appearing to this Commission as follows:

By this petition South Central Bell seeks to protect as confidential information furnished in response to the Attorney General's Second Data Request of July 5, 1994. The information sought to be protected is generally not known outside of South Central Bell and is not disseminated within South Central Bell except to those employees who have a legitimate business need to know and act upon the information. South Central Bell seeks to preserve and protect the confidentiality of the information through all appropriate means, including the maintenance of appropriate security at its offices.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts several categories of information and in its petition South Central Bell maintains that the information sought to be protected qualifies for exemption under one or more of these categories.

Item 25 requests copies of any management or regulatory audit report of any affiliate having transactions with South Central Bell issued since January 1, 1991. Attachment A of South Central Bell's response is an audit report from the 1993 NARUC/Florida Public Service Commission audit. This audit includes information concerning affiliate transactions and contains information regarding South Central Bell's unregulated affiliates. The information would provide competitors of these affiliates with the costs of the services they provide. It would also provide business plans and strategies of South Central Bell's affiliates which competitors could use to their strategic advantage.

Paragraph (c)1 of KRS 61.878(1) exempts information confidentially disclosed to a public agency when disclosure of that information is likely to cause substantial competitive harm to the party from whom the information was obtained. To qualify for the exemption the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs

when disclosure of the information gives competitors an unfair business advantage.

The information provided in Attachment A to South Central Bell's responses to Item 25 relating to affiliated transactions would provide competitors of South Central Bell or its unregulated affiliates with cost and business information they could use in devising more effective competitive strategies. Therefore, the information should be protected as confidential.

Item 27 requests financial statements for South Central Bell's subsidiaries. Attachments 2 through 7 of South Central Bell's response contain recent financial statements of their subsidiaries. The same information is required to be filed with the FCC and, thus, is a matter of public record. Therefore, the information cannot be protected as confidential.

Item 28(b) requests copies of lease agreements between South Central Bell and its affiliates. These are provided in attachments (A) through (F) to the response to this request. Disclosure of the information would reveal South Central Bell's rental expenses which competitors could use in estimating South Central Bell's overhead. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 42 requests information which substantiates that South Central Bell is buying and selling products or services from affiliates at prevailing market prices. Attachments 1 through 4 provide the requested information. Although South Central Bell

maintains that disclosure of this information would enable its competitors to estimate its overall expenses, the information furnished by South Central Bell only shows the type of services provided to affiliates and the affiliated transaction rule by which the transaction is governed. There are no expenses and costs revealed. Therefore, disclosure of this information is not likely to cause South Central Bell competitive injury, and the information is not entitled to protection.

Item 51(e) requests salary information for South Central Bell's pilot and crew members. South Central Bell maintains that disclosure of this information would violate each affected employee's right of privacy.

KRS 61.878(1)(a) exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." This provision is intended to exempt from public disclosure any information contained in the public record that relates the details of an individual's private life. The information is exempt from disclosure when the individual's privacy interest in the information outweighs the public's interest in the information.

Salaries and wages are matters of private interest which individuals have a right to protect unless the public has an overriding interest in the information. The information furnished, however, only shows the salary range for three labor classifications and does not provide the identity of persons who receive those salaries. Therefore, disclosure of the information

would not be an invasion of any employee's personal privacy, and the information is not entitled to protection.

Item 61 requests detailed financial information regarding South Central Bell's Kentucky unregulated operations, products, and services. Competitors could use this information to determine the company's performance on a service-by-service basis based on certain financial indicators not known outside South Central Bell. This information could also be used by competitors in assessing the business risk of entering the market for a particular service. Therefore, disclosure of the information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 63 requests workpapers used to develop the allocation factors to allocate costs between South Central Bell's regulated and non-regulated operations in this state. The information provided in Attachments 2 through 8 in South Central Bell's response would assist competitors in determining the price below which South Central Bell is unable to provide the service. Therefore, disclosure of the information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 68 requests certain FCC audit reports and documents prepared by South Central Bell in connection with the audit. Attachments 2 through 6 provide the requested information. The audit reports produced deal with a variety of topics and with both regulated and non-regulated services. They contain information

relating to costs, revenues, and business plans of both South Central Bell and its unregulated affiliates. This same information was filed with the FCC and according to the petition was granted confidential protection by that agency. However, it is the Commission's understanding that allegation is incorrect and that in fact the information was denied confidential protection by the FCC and is in the public record. Therefore, the information is not confidential and cannot be granted protection from public disclosure.

Item 69 requests certain internal audits performed within South Central Bell along with workpapers associated with the audits. These audit reports deal with a variety of topics and with highly sensitive areas of the business. They contain information relating to costs, revenues, and business plans of the company, which if disclosed would provide South Central Bell's competitors with a competitive advantage and, therefore, the information should be protected as confidential.

Items 91 and 92 request copies of Bellcore's most recent business plan and federal income tax schedule M-1. These documents are provided in the proprietary attachments to South Central Bell's responses. Bellcore's business plan contains information and analysis regarding its strategies, market opportunities, and contemplated projects which competitors could use in devising competing marketing strategies. Therefore, disclosure of the information is likely to cause South Central Bell and Bellcore

competitive injury, and the information should be protected as confidential.

Item 115 requests bills rendered by BellSouth Direct Marketing to South Central Bell's Kentucky intrastate operations for 1993 and 1994. These bills would reveal to competitors where South Central Bell has dedicated resources to develop the marketplace. Competitors could use this information to determine where South Central Bell has placed emphasis in its sales program and develop marketing strategies accordingly. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 119 requests the M-1 schedules from the BellSouth consolidated tax return. This information would provide competitors with information concerning the financial situation of South Central Bell which competitors could use to evaluate the financial condition of the company. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 179 requests information regarding budget variances. Competitors could use this information to determine South Central Bell's financial expectations in various market segments and its experience in achieving those expectations. Competitors could use this information to determine those areas and lines of business where South Central Bell may be more or less vulnerable to competitive entry. Therefore, disclosure of the information is

likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 182 requests copies of all budget instructions, assumptions, directives, manuals, policies, procedures, and timelines. Attachments 1 and 2 of South Central Bell's response are the financial planning assumptions for the budget process. These assumptions would provide South Central Bell's competitors with estimates of the company's future growth and business results. Disclosure of this information would assist potential competitors in deciding whether to enter a market and would give current competitors a strategic advantage. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 183 requests all budget forms used in the budgeting process. These forms are used by South Central Bell to track financial performance and set financial goals and have been developed or adapted for use by the company's managers at expense and effort to the company. Competitors, whose budgeting and financial tracking processes are confidential, will gain an advantage over South Central Bell because they will gain insight into South Central Bell's financial planning process. They will also be able to adapt many of the budget forms and analyses for their own use without incurring the expenses that South Central Bell incurred in development of these forms. Therefore, disclosure of the information is likely to cause South Central Bell

competitive injury, and the information should be protected as confidential.

Item 226 requests a copy of the contract between South Central Bell and BellSouth Advertising and Publishing Company ("BAPCO"). Item 232(b) requests the publishing fee percentages paid to South Central Bell by BAPCO on a state-by-state basis, and Item 242(b) requests the allocation of bad debt expense between Kentucky and BAPCO. Item 244 requests the total amount of billings for directory advertising. BAPCO, an affiliate of South Central Bell, publishes Yellow Page directories. The Yellow Pages business and the directory publishing business in general are highly competitive. The contract between South Central Bell and BAPCO reflects the specific publishing arrangement between the two parties. Since BAPCO negotiates these agreements with other companies, disclosure of this information would put BAPCO at a disadvantage with its competitors in negotiating contracts with other customers. Therefore, disclosure of the information is likely to cause South Central Bell and BAPCO competitive injury, and the information should be protected as confidential.

Item 258(f) requests information and documentation regarding employee benefits. Specifically, subsection (f) requests information about spousal travel expenses. The attachment to this response which South Central Bell seeks to protect as confidential contains the management relocation plans which are a part of the overall compensation package available to managers. South Central Bell maintains that disclosure of this information would enable

competitors to "outbid" South Central Bell for talent. Although South Central Bell does not publish this information, the petition does not indicate whether South Central Bell has any safeguards to prevent its employees from revealing these plans. On the contrary, prospective employees and employees who have left the company will have this information and current employees seeking new employment might use this information in evaluating job offers and possibly negotiating new positions. Therefore, it is unlikely that the information is confidential, and it is not entitled to protection.

Item 259 requests information regarding employee gifts, awards, luncheons, dinners, and similar items. Because the response is employee or vendor specific, South Central Bell maintains that the information should be protected as confidential. The petition, however, establishes no basis for protecting the information and, therefore, the petition should be denied.

Item 268 requests information on benefit levels and test period costs of non-qualified benefits plans for executives and key managers. Attachments A and B of the response are copies of the two benefit plans responsive to this request. The responses, however, are not entitled to protection for the same reasons identified in Item 258(f).

Items 344 and 347(a) request documents concerning inside wire maintenance plans. The attachments responsive to this request contain South Central Bell's Inside Wire Monthly Plan and Demand Analysis and revenue forecast information. Inside wire is a competitive service. Competitors could use this information to

determine the best estimate of many aspects of the inside wire market. The demand analysis would show competitors where to direct their marketing efforts and the business plan would show competitors where South Central Bell plans to direct its efforts in the inside wire market. The revenue forecasts reveal South Central Bell's estimate of its future business results. Competitors of South Central Bell could use this information in more effectively developing strategic competitive plans. Therefore, disclosure of the information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 350(a-k) requests certain information regarding South Central Bell's provision of inside wire service. The attachments to the response give a comprehensive view of the inside wire business as a whole, including budgets, results of operation and expenses. Competitors could use this information in analyzing South Central Bell's inside wire service to the detriment of South Central Bell and, therefore, the information should be protected as confidential.

Item 365 requests an itemization of legal expenses for non-rate case related work. South Central Bell maintains that disclosure of this information will allow competitors to identify issues and transactions which have caused South Central Bell to incur legal expenses and enable them to devise business plans that avoid potential legal problems, thereby reducing their operating expenses to the detriment of South Central Bell. The information filed in response to this request, however, simply provides the

names of the legal firms employed by South Central Bell, the total amount paid to each firm, and a description of the payment. This same information is included in South Central Bell's annual report and is a matter of public record. Therefore, it is not entitled to protection as confidential.

Item 366 requests information regarding legal settlements for injury and damage claims. The attachment to this response contains specific settlement amounts and is claimant specific. These settlements, when made, were confidential and disclosure would violate the privacy rights of the individuals who were parties to the settlement. South Central Bell does not state that the settlements were declared confidential by a court of law. Therefore, the identity of those persons, other than corporations, who were parties to the settlements should be protected as confidential, and the remaining information should be made a matter of public record.

Item 371(a) requests information concerning lobbying expenses and activities. Because other entities and competitors are not required to make public disclosure of lobbying expenses, South Central Bell maintains that it would be inequitable for South Central Bell to be required to do so. The petition, however, does not demonstrate how the information is protected under any provision of KRS 61.878(1) and, therefore, the information is not entitled to protection from public disclosure.

Item 378(d) requests marketing information regarding the allocation of costs to jointly marketed, regulated and non-

regulated services and products offered by South Central Bell. Disclosure of the allocation of costs would assist competitors in determining the price below which South Central Bell could not provide a service which competitors could use in developing competing market strategies. Therefore, disclosure of the information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 386 requests information regarding certain non-recurring expenses. The attachment to this response contains copies of monthly closeout letters for 1993. These letters identify settlements negotiated with other companies and certain contingent liabilities. These settlements are claimant specific and contain certain specific settlement amounts. South Central Bell maintains that disclosure of these settlements would impair its ability in future settlement negotiations. However, the petition does not demonstrate how the information is entitled to protection under KRS 61.878(1) and, therefore, the information is not entitled to protection.

Item 389 requests an organizational chart for South Central Bell. Because a chart specifically responsive to this request was not available, South Central Bell provided a list of employees meeting the criteria set forth in the question with their associated responsibility codes. The list contains employee names, addresses, and responsibility codes which South Central Bell seeks to protect as confidential on the grounds that the information could be used to commit fraud on the company. The petition,

however, does not demonstrate how the information is exempt under the provisions of KRS 61.878(1) and protection of the information should be denied.

Items 402, 410, 413, 415, 425, 426, 527, and 531 request information regarding post-retirement benefits and pensions. Many of the documents provided in response to Items 413, 415, 425, 426, and 531 are studies by expert benefit consultants obtained at great expense to the company and contain forecasts of future expenses. Competitors could use this information to evaluate their own post-retirement benefit and pension plans without incurring the same expense and to gain insight into South Central Bell's projected costs. The information would, therefore, have competitive value and should be protected as confidential.

Items 402 and 410 request the calculations of pension settlements and curtailments for the years 1991 through 1994 and an explanation of the development of the pension plan costs for 1993 and 1994. Item 527 requests documentation regarding the effect of Statement of Financial Accounting Standards No. 112 on the company's expenses. The statement was effective for fiscal years beginning after December 15, 1993. The information furnished in response to these three requests provides only historical data and not forecasts, and the petition does not demonstrate how such information can be used to South Central Bell's detriment. Therefore, the information cannot be protected as confidential.

Item 429 requests, by FCC account, South Central Bell's annual expenses as well as certain information regarding variances over or under the prior period exceeding 10 percent. This information is included in South Central Bell's annual report and is therefore, public record and cannot be protected as confidential.

Item 467 requests information regarding facilities, locations, and costs included as rental expense for the year ended December 31, 1993 and as budgeted for 1994. The attachment responsive to this request is the company's lease accounting system report. It contains all rental expenses for this period. Disclosure of this information would reveal to competitors the amount South Central Bell pays in rental expenses which competitors could use in evaluating South Central Bell's financial condition. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 469 requests a list of all research and development projects and related expenses. The attachment to the response lists Bellcore projects and expenditures associated with them, and technologies and projects in which South Central Bell has asked Bellcore to conduct research and development. Competitors could use this information to gain insight into projects in which South Central Bell is engaged and related technology deployment. Competitors could use this information in devising their own development plans to the detriment of South Central Bell and, therefore, the information should be protected as confidential.

Item 476(b) requests information and documents pertaining to restructuring charges and costs. Item (b) specifically requests the amount of work force reduction, by month, for 1993 and 1994. The attachments to this response show reduction in work force and reduction and elimination of work content. Competitors could use this information to target their approach to the telecommunications marketplace to the detriment of South Central Bell. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 476(e) requests information and documents pertaining to restructuring charges and costs. Item (e) specifically requests documentation regarding restructuring costs, benefits, and cost savings. The response details how the company is accomplishing its personnel reduction plans and goals. The attachments illustrate analysis and documentation of each initiative within the project. Disclosure of this information and the plans made pursuant to the information would assist competitors in better targeting their offerings to the marketplace. It would also enable competitors to develop plans to reduce and eliminate certain jobs and functions at a lesser expense than that incurred by South Central Bell in the same process. Therefore, disclosure of the information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 484 requests documents describing the projection of revenues South Central Bell expects to receive from its affiliates

for 1994. The attachment to the response to this request contains the amount of directory publishing fees received by month for Kentucky in 1994. Although South Central Bell maintains that this information could be used by competitors of BAPCO in devising competing market plans, the information is so general that it has no competitive value. Therefore, protection of the information should be denied.

Item 488 requests certain financial information regarding revenues generated by unregulated subsidiaries. Because certain of the company's subsidiaries provide unregulated products and services which are highly competitive, South Central Bell has requested that the information be protected as confidential. The information, however, does not reveal any components of financial conditions, net income, or rates of return, and shows only a single number for each component of the response with no detail as to how the numbers were generated. The information is, thus, too general to be of competitive value and should not be protected as confidential.

Item 493 requests explanations of all out of period adjustments for various revenue categories for 1993 and 1994. The response represents a settlement entered into with a corporate customer, and South Central Bell maintains that disclosure of the information would violate the right of privacy of that customer. However, the exemption provided in KRS 361.878(1)(a) applies only to individuals and not to corporations and South Central Bell does not state that the settlement was declared confidential by a court

of law. Therefore, the information cannot be protected as confidential on the grounds offered.

Item 501(a) requests the average salary range for management personnel with maintenance responsibilities in Kentucky and Item 507 requests information regarding general wage increases and merit wage increases. Although South Central Bell maintains that disclosure of this information would impair its ability to hire the best employees under the best possible terms and conditions, the petition does not demonstrate how this information qualifies for exemption under KRS 61.878(1). Therefore the request for protection should be denied.

Item 534 requests information regarding each separate software addition in 1993. The attachments filed in response to this request reflect software costs and are vendor specific as well as being central office specific. South Central Bell maintains that disclosure of this information would enable competitors to gain an unfair bargaining position with software vendors. The petition, however, does not establish how the information is entitled to protection under KRS 61.878(1). Therefore, the information is not entitled to protection.

Item 535(a) requests information regarding special projects in which South Central Bell has participated for 1993 and 1994. The attachment filed in response to the request highlights areas that South Central Bell believes are important and would assist competitors in designing their own plans to improve work processes. The information also identifies the cost incurred by South Central

Bell to complete the projects. This would assist competitors in pricing their own projects. Therefore, disclosure of the information is likely to cause competitive injury, and the information should be protected as confidential.

Item 543 requests a description of telephone plant under construction projects included in 1993 rate base and their expected service dates. This item also asks whether any such projects relate to new customers. Competitors could use this information to identify prospective customers to the detriment of South Central Bell and, therefore, the information should be protected as confidential.

Item 545 requests information regarding uncollectible accounts which exceed \$2,500. South Central Bell maintains that disclosure of the information would violate the customers' right of privacy. To the extent that such customers are not corporations, this information should be protected from disclosure.

Item 553 requests information and documents concerning payments from the High Cost Fund or Universal Service Fund. The attachment to this response contains information that reflects the movement of customers to and from specific services as rates are adjusted. Competitors could use this information to gain market information and develop pricing strategies accordingly. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 556 requests studies and reports concerning costs associated with South Central Bell's voice message service ("MemoryCall") in Kentucky. This cost study would assist competitors in determining the price below which South Central Bell cannot provide this service. Competitors could use this information in devising competing marketing strategies to the detriment of South Central Bell and, therefore, the information should be protected as confidential.

Item 580 requests information regarding the deployment of certain technologies throughout the BellSouth region. The attachments to the response contain current business plans for these technologies. Disclosure of these plans would provide competitors with a "road map" to the decision making process for technology deployment within BellSouth's region and would further reveal South Central Bell's technology deployment plans for several specific services. This information could be used by competitors to devise competing market strategies to the detriment of South Central Bell and, therefore, the information should be protected as confidential.

Item 581 requests data generated to make a decision about the pricing of new services made possible by the deployment of SS7, ISDN, Digital Switching, and fiber optics. The attachments to the response are strategies and pricing plans for various services. South Central Bell has invested time and effort in studying the market for these services which competitors could use in devising their own market strategies. Therefore, disclosure of the

information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

Item 593 requests analyses conducted by South Central Bell concerning competitiveness in Kentucky. The attachments filed in response to this request would provide competitors with a clear view of how much South Central Bell knows about their business activities. Competitors could use this information in devising operating and marketing strategies to offset this knowledge. Therefore, disclosure of this information is likely to cause South Central Bell competitive injury, and the information should be protected as confidential.

This Commission being otherwise sufficiently advised:

IT IS ORDERED that:

1. The petition to protect as confidential the information filed in response to Items 27, 42, 51(e), 68, 258(f), 259, 268, 365, 371(a), 386, 389, 402, 410, 429, 484, 488, 493, 501(a), 507, 527, and 534 is denied.

2. The information filed in response to the items listed in paragraph 1 herein above, shall be held and retained by this Commission as confidential for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Orders herein.

3. The identities of the individuals furnished in response to Items 366 and 545, which South Central Bell has petitioned to be withheld from public disclosure, shall be held and retained by this

Commission as confidential and shall not be open for public inspection.

4. The petition to protect the remainder of information filed in response to Items 366 and 545 is denied and South Central Bell shall, within 20 days from the date of this Order, file edited copies of its response in accordance with this Order.

5. The remaining items petitioned to be withheld from public disclosure shall be held and retained by this Commission as confidential and shall not be open for public inspection.

Done at Frankfort, Kentucky, this 20th day of July, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director